



ENVIRONMENTAL PROTECTION AGENCY

R08-WR-2013-0007; FRL-9904-28-Region-8

Approval of Application Submitted by Eastern Shoshone Tribe and Northern Arapaho Tribe for Treatment in a Similar Manner as a State Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces that the EPA Regional Administrator for Region 8 has approved the December 2008 application submitted by the Northern Arapaho Tribe and Eastern Shoshone Tribe (Tribes) of the Wind River Indian Reservation for treatment in a similar manner as a state (TAS) pursuant to the Clean Air Act and the EPA's implementing regulations for purposes of certain Clean Air Act provisions. None of the provisions for which the Tribes requested eligibility entails the exercise of Tribal regulatory authority under the Clean Air Act.

DATES: EPA's decision approving the Tribes' TAS application was issued and took effect on December 6, 2013.

ADDRESSES: You may review copies of the Wind River TAS Decision Document, Attachment 1 (Legal Analysis of the Wind River Indian Reservation Boundary), Attachment 2 (Capability Statement), and other supporting information at the EPA Region 8 Office, 1595 Wynkoop Street, Denver, Colorado 80202-1129. If you wish to review the documents in hard copy, EPA requests that you contact the individual listed below to view these documents. You may view the hard copies of these documents Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an

appointment at least 24 hours before the day of your visit. Additionally, these documents are available electronically at: <http://www2.epa.gov/region8/tribal-assistance-program>.

FOR FURTHER INFORMATION CONTACT: Carl Daly, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6416, daly.carl@epa.gov.

SUPPLEMENTARY INFORMATION:

On December 17, 2008, as supplemented on December 23, 2008, the Tribes submitted their TAS application as authorized by Clean Air Act section 301(d) (42 U.S.C. § 7601(d)) and EPA's regulations at 40 CFR part 49. In their application, the Tribes requested TAS eligibility for purposes of Clean Air Act provisions that generally relate to grant funding (e.g., for air quality planning purposes) (section 105 (42 U.S.C. § 7405)); involvement in EPA national ambient air quality redesignations for the Reservation (section 107(d)(3) (42 U.S.C. § 7407(d)(3))); receiving notices of, reviewing, and/or commenting on certain nearby permitting and sources (sections 505(a)(2) (42 U.S.C. § 7661d(a)(2)) and 126 (42 U.S.C. § 7426); receiving risk management plans of certain stationary sources (section § 112(r)(7)(B)(iii) (42 U.S.C. § 7412(r)(7)(B)(iii))); and participation in certain interstate and regional air quality bodies (sections 169B (42 U.S.C. § 7492), 176A (42 U.S.C. § 7506a) and 184 (42 U.S.C. § 7511c). None of the provisions for which the Tribes requested eligibility entails the exercise of Tribal regulatory authority under the Clean Air Act. The Tribes' TAS application thus does not request, and EPA's decision to approve the application does not approve, Tribal authority to implement any Clean Air Act regulatory programs or to otherwise implement Tribal regulatory authority under the Clean Air Act.

In accordance with EPA's regulations, as part of its review process, EPA notified all appropriate governmental entities and the public of the Tribes' TAS application and in that notice specified the geographic boundaries of the Wind River Indian Reservation as identified in the Tribes' application. EPA afforded the appropriate governmental entities and the public a period totaling 60 days to provide written comments regarding any dispute concerning the boundary of the Reservation. Several commenters disagreed with the Tribes' Reservation boundary description, asserting that a 1905 Congressional Act, 33 Stat. 1016 (1905) (1905 Act), altered and diminished the Reservation boundary. Consistent with established TAS procedures, EPA afforded the Tribes an opportunity to respond to comments received by EPA on the Tribes' application and has previously made all comments received and the Tribes' responses thereto available to the public. In addition, because EPA was aware of existing disagreements regarding the Reservation boundary, EPA exercised its discretion to consult with the U.S. Department of the Interior (DOI), which has expertise on Indian country issues. On October 26, 2011, EPA received an opinion from the DOI Solicitor addressing the Reservation boundary.

On December 4, 2013, the Tribes sent EPA a letter requesting that EPA not address at this time the lands subject to Section 1 of the 1953 Act, 67 Stat. 592 (1953), and stating that the Tribes would notify EPA in writing if and when they decide to request an EPA decision with respect to those lands.

EPA has carefully considered the application materials, the comments received from appropriate governmental entities and the public and the Tribes' responses to those comments, the opinion of the DOI Solicitor, as well as other materials, relevant case law, applicable statutory and regulatory provisions, and relevant EPA guidance.

EPA has determined that the Northern Arapaho and Eastern Shoshone Tribes have met the requirements of CAA § 301(d)(2) and 40 CFR part 49.6 and are therefore approved to be treated in a similar manner as a state for purposes of CAA §§ 105, 505(a)(2), 107(d)(3), 112(r)(7)(B)(iii), 126, 169B, 176A, and 184. EPA's decision also concludes that the boundaries of the Reservation encompass and include, subject to the proviso below concerning the 1953 Act, the area set forth in the 1868 Treaty of Fort Bridger, 15 Stat. 673 (1868), less those areas conveyed by the Tribes under the 1874 Lander Purchase Act, 18 Stat. 291 (1874), and the 1897 Thermopolis Purchase Act, 30 Stat. 93 (1897), and including certain lands located outside the original boundaries that were added to the Reservation under subsequent legislation in 1940, 54 Stat. 628 (1940). With regard to the lands subject to Section 1 of the 1953 Act, 67 Stat. 592 (1953), consistent with the Tribes' request that EPA's TAS decision not address the lands described in the 1953 Act at this time, the lands are not included in the geographic scope of approval for this decision. EPA's TAS decision therefore does not address the 1953 Act area. Thus, EPA approved the Tribes' *Application for Treatment in a Manner Similar to a State Under the Clean Air Act for Purposes of Section 105 Grant Program, Affected State Status and Other Provisions for Which No Separate Tribal Program is Required*.

A detailed explanation of EPA's approval of the Tribes' TAS application is contained within the Decision Document and accompanying attachments referred to in the **ADDRESS** section of this notice and at <http://www2.epa.gov/region8/tribal-assistance-program>.

JUDICIAL REVIEW: Pursuant to section 307(b)(1) of the Clean Air Act (42 U.S.C. § 7607(b)(1)), Petitioners may seek judicial review of this approval in the United States Court of Appeals for the Tenth Circuit. Any petition for judicial review shall be filed within 60 days from

the date this notice appears in the Federal Register, *i.e.*, not later than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 11, 2013.

Howard M. Cantor,
Acting Regional Administrator,
Region 8.

[FR Doc. 2013-30248 Filed 12/18/2013 at 8:45 am; Publication Date: 12/19/2013]